

REMARKS

The specification and drawings have been amended to address the objection under 37 CFR 1.83(a) as discussed at page 2 of the Office Action. New Figures 7 and 8 are provided herewith, and a corresponding description of the drawings has been provided by amendment to the specification. Support for the new drawings and the amendment to the specification is found at Claims 23 and 24, and in the original drawings, and throughout the specification as filed.

Claims 1-24 are pending in the above-identified application. Claims 1-17 and 19-24 have been rejected. Claim 18 has been objected to as being dependent upon a rejected base claim, but comprises allowable subject matter. Claim 21 has been amended to recite that the device further comprises a diagnostic test strip. Support for the amendment can be found throughout the Specification and the Claims as filed. See, for example, paragraphs [0003] and [0004]. Therefore, no new matter is added by way of this amendment. Accordingly, claims 1-24 are at issue.

Amendments to the Claims are shown above with insertions shown in underlined text, and deletions shown in [[double brackets]] when five or fewer consecutive characters are deleted and in strikethrough text otherwise.

Objection to the Drawings

The Office Action included an objection to the drawings under 1.83(a). Applicants have amended the drawings and the specification to include new Figures 7 and 8. New Figure 7 depicts an embodiment of the device claimed in claim 23; new Figure 8 depicts an embodiment of the device claimed in claim 24. No new matter is added by the amendment to the specification or to the drawings. Applicants respectfully request that the objection be withdrawn.

Rejection of Claims Under 35 U.S.C. §102

Claims 1-8, 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Testi (USPN 2,288,989), which is referred to as Testi hereinafter. Specifically, the Examiner alleges that Testi discloses a dispenser comprising a main body and a textured dispensing cylinder, said cylinder being mounted in a channel to allow movement of the cylinder vertical movement relative to the plane of a stack of articles. The Examiner further alleges that Testi discloses

dispensing strips of metal which can be tested and held at one or more positions. The Examiner alleges that the dispensing device presses against a side of the article being dispensed, and said side can be considered a top, bottom, or side depending on how it is defined. Applicants respectfully disagree.

In addition, claims 1-5, 12-17 and 19-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Alltop et al. (USPN 3,308,989), which is referred to as Alltop hereinafter. The Examiner alleges that Alltop discloses a dispenser comprising a main body and a thumb actuated pressed dispensing element. The Examiner further alleges that the dispensing element includes slots and protrusions for guiding the element and stopping its movement at first and second positions and a protrusion for contacting the strip. The Examiner alleges that the dispensing device presses against a side of the article being dispensed, said side can be considered a top, bottom, or side depending on how it is defined. Applicants respectfully disagree.

The Law of Anticipation

Anticipation under Section 102 can be found only if a reference shows exactly what is claimed. *Titanium Metals Corp. v. Banner*, 778 F.2d 775 (Fed. Cir. 1985). More particularly, a finding of anticipation requires the disclosure in a single piece of prior art of each and every limitation of a claimed invention. *Electro Med. Sys. S.A. v. Cooper Life Sciences*, 34 F.3d 1048, 1052 (Fed. Cir. 1994). "To anticipate, every element and limitation of the claimed invention must be found in a single prior art reference, arranged as in the claim." *Brown v. 3M*, 265 F.3d 1349 (Fed. Cir. 2001).

As an initial issue, Applicants note that the Examiner alleges that Testi discloses a dispenser comprising a main body and a textured dispensing cylinder, said cylinder being mounted in a channel to allow movement of the cylinder vertical movement relative to the plane of a stack of articles. See lines 1-3 of the 4th paragraph on page 3 of the Office Action. Applicants respectfully submit that this is a typographic error and the Examiner meant that said cylinder is mounted in a channel to allow vertical movement of the cylinder relative to the plane of a stack of articles.

Claim 1 teaches a strip ejection system for holding and ejecting a strip which comprises a body and a strip movement section. The strip movement section comprises a pressing element

which is the only element of the strip movement section movable relative to the body. In operation, the pressing element is pressed against a face of a strip by an operator to make contact with the strip. The pressing element is then moved by the operator, while maintaining contact with the strip, such that the strip is transported by the operator's movement.

Claim 21 teaches a strip ejection system which comprises a body, a pressing element and a diagnostic test strip. In operation, the pressing element is pressed against a face of a strip by an operator to make contact with the strip. A friction force between a surface of the pressing element and at least one surface of the strip against which the surface of the pressing element is pressed transports the strip from a first position to a second position.

Testi

Testi discloses a blade receptacle designed and intended to handle double-edged safety razor blades, each of which has a longitudinal central slot (39). The blade receptacle comprises a cover (10) with an opening or slot (13), a roll (15) with a concentric flange or collar (16), and a bowed leaf spring (17). The opening or slot (13) of the cover (10) is of such width as to permit the passage of only one blade at a time. The roll (15) is of such diameter as to extend into engagement with the uppermost one of a stack of blades when the roll (15) is depressed to the bottom of its bearing slots (14). The flange or collar (16) extends at all times into the slot in the blade stack provided by the aligned slots (39) of the individual blades. In using the blade receptacle, it is necessary to rotate the roll (15) in the proper direction by drawing a thumb or finger across the roll (15). Only the uppermost blade can advance out through the slot (13). The movement of the uppermost blade is guided by the action of the flange or collar (16) of the roll (15) as the edges of the slot (39) travel past the flange or collar (16). The bowed leaf spring (17) is located in the bottom of the receptacle and acts normally to lift and maintain the stack so that its uppermost blade is in yielding contact with the inner face of the cover (10).

The deficiencies of Testi compared to claim 1 are at least the following. Firstly, the blade receptacle disclosed in Testi has at least two elements which are movable relative to the cover (10), the roll (15) and the bowed leaf spring (17). Secondly, the blade receptacle disclosed in Testi relies on the bowed leaf spring to lift and maintain the stack of blades so that its uppermost blade is in yielding contact with the inner face of the cover (10). There are other deficiencies in

the blade receptacle disclosed in Testi compared to the system disclosed in claim 1. Applicants reserve the right to argue these and other deficiencies of Testi in future prosecution if needed.

Accordingly, Testi does not disclose each and every limitation of claim 1. Claims 2-8 are dependent from claim 1 and include all the limitations of claim 1. Therefore, Testi does not disclose each and every limitation of these dependent claims. Applicants respectfully submit that claims 1-8 are not anticipated by Testi.

The deficiency of Testi compared to amended claim 21 is at least that the blade receptacle disclosed in Testi does not comprise a diagnostic test strip. There are other deficiencies in the blade receptacle disclosed in Testi compared to the system disclosed in claim 21. Applicants reserve the right to argue these and other deficiencies of Testi in future prosecution if needed.

Accordingly, Testi does not disclose each and every limitation of claim 21. Claims 22-24 are dependent from claim 21 and include all the limitations of claim 21. Therefore, Testi does not disclose each and every limitation of these dependent claims. Applicants respectfully submit that claims 21-24 are not anticipated by Testi.

In view of the foregoing, Testi does not anticipate claims 1-8 or claims 21-24. Reconsideration and withdrawal of the rejection of these claims under 35 U.S.C. §102(b) over Testi is respectfully requested.

Alltop

Alltop teaches a business card dispenser. The business card dispenser comprises a main frame (16) with a top wall (17), a rectangular spring retainer (40), an actuator (13), a pusher plate (44) with a shoulder (51) at the trailing edge (50) of the pusher plate (44), and a slot (38) defined by the lip (28) of the top wall (17) and an edge (53) of an end wall (35). The rectangular spring retainer (40) urges a stack of business cards toward the top wall (17). The shoulder (51) of the pusher plate (44) has a depth substantially equal to the thickness of a comparatively thin business card so that only one card can be dispensed at a time. The pusher plate (44) is mounted on for reciprocation with the actuator (13). As the actuator (13) is moved from one side to another side, the shoulder (51) engages the uppermost card of the stack and forces it along the top wall (17) through the slot (38).

The deficiencies of Alltop compared to claim 1 are at least the following. Firstly, the business card dispenser disclosed in Alltop has at least three elements which are movable relative to the main frame (16), the actuator (13), the pusher plate (44) and the spring retainer (40). Secondly, the business card dispenser relies on the spring retainer to urge the stack of cards towards the top wall (17). There are other deficiencies in Alltop compared to the system disclosed in claim 1. Applicants reserve the right to argue these and other deficiencies of Alltop in future prosecution if needed.

Accordingly, Alltop does not disclose each and every limitation of claim 1. Claims 2-5 and 12-17 are dependent from claim 1 and include all the limitations of claim 1. Therefore, Alltop does not disclose each and every limitation of these dependent claims. Applicants respectfully submit that claims 1-5, 12-17 and 19-20 are not anticipated by Alltop.

The deficiency of Alltop compared to claim 21 is at least that the business card dispenser disclosed in Alltop does not comprise a diagnostic test strip. There are other deficiencies in the business card dispenser disclosed in Alltop compared to the system disclosed in claim 21. Applicants reserve the right to argue these and other deficiencies of Alltop in future prosecution if needed.

Accordingly, Alltop does not disclose each and every limitation of claim 21. Claims 22-24 are dependent from claim 21 and include all the limitations of claim 21. Therefore, Alltop does not disclose each and every limitation of these dependent claims. Applicants respectfully submit that claims 21-24 are not anticipated by Alltop.

In view of the foregoing, Alltop does not teach each and every limitation of claims 1-5, 12-17 and 19-24. Reconsideration and withdrawal of the rejection of these claims under 35 U.S.C. §102(b) over Alltop is respectfully requested.

Rejection of Claims Under 35 U.S.C. §103

Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Testi in view of Wajda (PGpub 2003/0121932), which is referred to as Wajda hereinafter. Specifically, the Examiner alleges that Testi discloses the dispenser as claimed in claims 1-8. The Examiner acknowledges that Testi does not disclose a ball shaped dispenser. The Examiner alleges that

Wajda teaches a ball shaped dispenser wheel, and remedies the deficiency of Testi. Applicants respectfully disagree.

Standard for Obviousness

The Patent and Trademark Office has the burden under section 103 to establish a *prima facie* case of obviousness. *In re Piasecki*, 745 F.2d 1468, 1471-72, 223 USPQ 785, 787-87 (Fed. Cir. 1984). To establish a *prima facie* case of obviousness, three basic criteria must be met: first, the prior art reference (or references when combined) must teach or suggest all the claim limitations; second, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; finally, there must be a reasonable expectation of success. *See* M.P.E.P. §2143.

An essential characteristic of any *prima facie* case of obviousness is that the references, when combined must teach or suggest all the claim limitations. The present rejection fails to make a *prima facie* case of obviousness because the references in combination fail to supply at least one element common to all of the claims in consideration.

Wajda discloses a dispenser for flat articles. The dispenser comprises a container (12 in Figure 1, 40 in Figure 2, or 60 in Figure 3) holding flat articles, an operation element for a user to maneuver (20 in Figure 1, 42 in Figure 2, or 62 in Figures 3 and 6), and a pressing means (16 in Figure 1, 42 in Figure 2, or 70a and b in Figure 3). In some embodiments, the pressing element is connected to the operation element. In other embodiments, the pressing element is mounted onto a movable mounting means.

The deficiencies of Testi compared to claim 1 has been discussed above. Wajda fails to remedy at least one of those deficiencies. Neither Testi nor Wajda teaches a dispenser which comprises only one element movable relative to the cover or container of the dispenser. Dependent claims 9-11 include all the limitations of claim 1. Therefore, Wajda does not remedy the deficiencies of Testi compared to claims 9-11. Moreover, Wajda does not disclose a ball shaped dispenser.

In view of the foregoing, Applicants respectfully submit that claims 9-11 are patentable over the cited references in combination or alone. Withdrawal of the rejection of claims under 35 U.S.C. §103 is respectfully requested.

Objection to Claim 18

Claim 18 has been objected to as allegedly being dependent upon a rejected base claim. The Examiner has acknowledged that claim 18 contains allowable subject matter. Claim 18 depends from Claim 13, which depends from claim 12, which is depends from claim 1. Applicants respectfully submit that in view of the foregoing discussion claim 1 is not anticipated by Testi or Alltop, and claims 12 and 13 are not anticipated by Alltop. Accordingly, Applicants respectfully request the objection to claim 18 be reconsidered and withdrawn.

Conclusion

Applicants submit that the present Application is in condition for allowance and respectfully request the same. If any issues remain, the Examiner is cordially invited to contact Applicants' representative at the number provided below in order to resolve such issues promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 04-0258.

Respectfully submitted,

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